

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SALVADOR MONDACA-VEGA,

Petitioner,

v.

ERIC H. HOLDER, JR., Attorney
General,

Respondent.

No. CV-04-339-FVS

FINDINGS AND CONCLUSIONS

THIS MATTER came before the Court on April 26, 2011, for a bench trial regarding the petitioner's allegation that he is a citizen of the United States. He was represented by Matt Adams and Martha H. Rickey. The respondent was represented by Katherine E.M. Goettel and Colin A. Kisor.

PROCEDURAL HISTORY

On January 31, 1994, the petitioner was convicted in Yakima County (Washington) Superior Court, under the name Reynaldo Mondaca Carlon, of the crime of second degree assault while armed with a deadly weapon. He was sentenced to a term of 18 months imprisonment. A representative of the Immigration and Naturalization Service ("INS") interviewed him while he was imprisoned. On December 14, 1994, the INS issued an Order to Show Cause. In essence, the INS alleged he is not Reynaldo Mondaca Carlon, a citizen of the United States, but

1 rather Salvador Mondaca-Vega, a citizen of Mexico. An Immigration
2 Judge ("IJ") conducted a hearing and determined the INS's allegations
3 are correct; namely, the petitioner is Salvador Mondaca-Vega, a
4 Mexican citizen, not Reynaldo Mondaca Carlon, a United States citizen.
5 The IJ issued a deportation order on November 17, 1998. The
6 petitioner appealed. On February 27, 2003, the Bureau of Immigration
7 Appeals ("BIA") affirmed the IJ's order. The petitioner filed a
8 petition for review with the Ninth Circuit on March 28, 2003. On July
9 12, 2004, the Ninth Circuit transferred the case to the United States
10 District Court for the Eastern District of Washington. 28 U.S.C. §
11 1252(b)(5)(B). While proceedings were pending in district court, the
12 petitioner ceased communicating with his attorney. Consequently, on
13 November 15, 2006, this Court returned the case to the Ninth Circuit.
14 Ultimately, the Ninth Circuit excused the petitioner's failure to
15 communicate with his attorney. On March 29, 2010, the circuit court
16 again transferred the case to this district. The Court scheduled a
17 trial. The respondent moved for summary judgment. The court denied
18 the motion. Prior to trial, the parties agreed to certain facts. In
19 addition, they stipulated to the admissibility of a number of
20 exhibits. A one-day trial took place on April 26, 2011. The
21 petitioner testified and offered the testimony of one of his
22 daughters.
23

24 **SUMMARY OF EVIDENCE**

25 On June 3, 1931, Salvador Mondaca Vega was born to Felix Mondaca
26 and Josefa Vega in Mahone, Mexico. Salvador's birth was registered in

1 El Fuerte, Mexico, on June 20th. (Respondent's Ex. 201.)

2 On July 17, 1931, Renoldo Mondaca was born to Marin Mondaca and
3 Antonia Carlon in Imperial, California. (Petitioner's Ex. 2.)

4 No matter where the petitioner was born, he grew up in El Fuerte,
5 Sinaloa, Mexico. (Joint Pretrial Order, Agreed Fact 4, at 4.)

6 The petitioner traveled from Mexico to the United States when he
7 was approximately 20 years old (circa 1951). (Respondent's Ex. 204,
8 pp. 111-15.)

9 The petitioner's FBI Rap Sheet indicates the petitioner was
10 removed from the United States under the name Salvador Mondaca during
11 July and September of 1951. (Respondent's Ex. 230.)

12 On September 8, 1952, a person claiming to be Salvador Mondaca
13 applied for a Social Security card. (Respondent's Ex. 214; Joint
14 Pretrial Order, Agreed Fact 7, at 4.) The applicant listed Feliz
15 Mondaca as his father and Josefa Vega as his mother. The applicant
16 said he was born on April 13, 1931. *Id.* Apparently, his application
17 was rejected because he failed to establish United States citizenship.
18 There is no handwriting on the application. Thus, no handwriting
19 comparison can be performed.
20

21 On September 24, 1952, Reynaldo Mondaca Carlon registered with
22 the Selective Service Board in Salinas, California. On October 18,
23 1952, he was found unacceptable for induction. (Joint Pretrial Order,
24 Agreed Fact 6, at 4.) There is no handwriting on the application.
25 Thus, no handwriting comparison can be performed. (Petitioner's Ex.
26 9.)

1 Petitioner's Exhibit 9 is a single page. Copies of three
2 documents are set forth on Exhibit 9. One is a Selective Service
3 certificate. Another is Reynaldo C. Mondaca's Social Security card.
4 The latter was issued many months after the former.

5 On November 10, 1952, the petitioner was deported at San Ysidro,
6 California. (Respondent's Exhibit 207.)

7 On May 11, 1953, a person named Salvador Mondaca-Vega was served
8 with a warrant by the Immigration and Naturalization Service ("INS")
9 while detained in the King County (Washington) Jail. (Respondent's
10 Exhibit 205.)

11 On May 19, 1953, the person who was served with the warrant was
12 fingerprinted. The fingerprints are those of the petitioner.
13 (Respondent's Ex. 213; Joint Pretrial Order, Agreed Fact 9, at 5.)

14 On May 22, 1953, the petitioner was deported from the United
15 States at San Ysidro, California, under the name Salvador Mondaca-
16 Vega. (Respondent's Ex. 204, pp. 150-53.)

17 On May 23, 1953, someone applied for a Social Security card in
18 Calexico, California, under the name Reynaldo C. Mondaca.
19 (Petitioner's Ex. 5.)

20 Handwriting analysis suggests, without firmly establishing, that
21 it was the Petitioner who signed the Social Security application.
22 (Respondent's Exs. 216 and 217; Joint Pretrial Order, Agreed Fact 5,
23 at 4.)

24 The petitioner would have had to present a birth certificate in
25 order to obtain a Social Security number. (Respondent's Ex. 204, p.
26

1 137.)

2 The Social Security Administration issued a Social Security card
3 to the petitioner. The name on the card is Reynaldo C. Mondaca.
4 (Petitioner's Ex. 9.) The Social Security number is 555-48-1879.
5 (Joint Pretrial Order, Agreed Fact 18, at 7.)

6 The petitioner has consistently used Social Security number 555-
7 48-1879. (Respondent's Ex. 204, p. 120.) He is qualified to receive
8 Social Security benefits. (Joint Pretrial Order, Agreed Fact 18, at
9 7.)

10 On July 28, 1953, the petitioner was deported from the United
11 States under the name Salvador Mondaca-Vega. (Respondent's Ex. 230.)

12 On September 15, 1954, an INS official issued a warrant for the
13 detention of the petitioner, who was being held by the Yakima County
14 Sheriff under the name Salvador Mondaca-Vega. (Respondent's Ex. 209.)

15 On September 18th, the petitioner was fingerprinted by the INS
16 while in custody in Seattle, Washington. (Respondent's Ex. 213; Joint
17 Pretrial Order, Agreed Fact 9, at 5.)

18 Fingerprint analysis has confirmed that the fingerprints which
19 were taken on September 18, 1954, are those of the petitioner. *Id.*

20 On September 20th, the petitioner gave a sworn statement to an
21 INS official in Seattle. The petitioner signed the statement. The
22 petitioner made several statements to the INS official. Among other
23 things, he averred that his name is Salvador Mondaca-Vega and that he
24 was born on "April 16, 1931, at El Puerte, Sin., Mexico."

25 (Respondent's Ex. 212; Joint Pretrial Order, Agreed Fact 8, at 4.)
26

1 On September 20, 1956, the petitioner was granted voluntary
2 removal to Mexico under the name Salvador Mondaca-Vega. (Respondent's
3 Ex. 230.)

4 The petitioner accepted voluntary departure ten to twenty times
5 under the name Salvador Mondaca-Vega. (Joint Pretrial Order, Agreed
6 Fact 24, at 8.)

7 In approximately 1959, the Petitioner began a liaison with
8 Aurelia Estrella. Miss Estrella bore him nine children. The first
9 six were born in Mexico. (Respondent's Ex. 204, pp. 163-65; Joint
10 Pretrial Order, Agreed Fact 4, at 12.)

11 On January 11, 1966, the petitioner was deported under the name
12 Jose Valdez-Vega. (Respondent's Ex. 230.)

13 On or about October 20, 1969, the petitioner was charged with a
14 crime in Bakersfield, California, under the name Reynaldo Carlen
15 Mondaca. (Respondent's Ex. 230.)

16 The date of October 28, 1969, is the last time the name "Salvador
17 Vega Mondaca" appears on the petitioner's FBI Rap Sheet.
18 (Respondent's Ex. 230.)

19 On August 7, 1970, the petitioner and Miss Estrella were married
20 in Reno, Nevada. (Respondent's Ex. 230.)

21 On February 9, 1973, a Border Patrol Agent in Bakersfield,
22 California, wrote to the Officer in Charge of the United States INS
23 office in Mazatlan, Sinaloa, Mexico, asking him to locate a birth
24 certificate for Salvador Mondaca-Vega, whose date of birth was April
25 16, 1931. (Respondent's Ex. 228.)
26

1 On March 29, 1973, an official in the American Consulate in
2 Mazatlan sent a copy of Salvador Mondaca-Vega's birth certificate to
3 the Border Patrol Agent in Bakersfield. (Respondent's Ex. 229.)

4 On November 24, 1974, Mrs. Mondaca Estrella arranged for
5 daughters Consuelo and Guadalupe to be baptized in the Parish of Our
6 Lady of Guadalupe, Juan Jose Rios, Sinaloa. The baptismal
7 certificates list Mrs. Aurelia Estrella as the girls' mother and
8 Reynaldo Mondaca as their father. (Petitioner's Ex. 11.)

9 On November 9, 1976, the petitioner presented his daughter,
10 Mireya Mondaca Estrella, to Enrique P. Canado, the Officer of the
11 Civil Registry in El Fuerte, Sinaloa, Mexico. Mireya had been born in
12 El Fuerte on May 11, 1960. The petitioner applied for a birth
13 certificate for her. It is not entirely clear what occurred in the
14 proceeding before Mr. Canado. The birth certificate indicates two
15 witnesses confirmed Mr. Mondaca "has residence in Juan Jose Rios,
16 Guasave, Sinaloa." (Petitioner's Ex. 11.) In addition, the
17 petitioner presented his Nevada marriage certificate. Presumably,
18 this was necessary in order to document he was married to Mireya's
19 mother. A birth certificate was issued to Mireya. It lists her
20 father as "Reynaldo C. Mondaca." *Id.* It lists her paternal
21 grandparents as, respectively, "Marin Mondaca" and "Antonia Carlon."
22 *Id.*

24 During February of 1977, the petitioner filed an affidavit, under
25 the name Reynaldo Mondaca, in support of his application for United
26 States citizenship for several of his children. (See, e.g.,

1 Petitioner's Ex. 15.) The INS issued Certificates of Citizenship to
2 four of his children; namely, Maria del Rosario Mondaca, Salvador
3 Mondaca, Consuelo Mondaca, and Guadalupe Mondaca. (Petitioner's Ex.
4 17.)

5 On February 22, 1977, the petitioner filed a relative immigrant
6 visa petition, under the name Reynaldo Mondaca, on behalf of his wife,
7 Aurelia Estrella de Mondaca, and two of his children, Rudolfo Mondaca
8 and Mireya Mondaca. On April 13, 1977, the INS issued a "Notice of
9 Approval of Relative Immigrant Visa Petition." (Petitioner's Ex. 12.)

10 During November of 1977, the INS adjusted the status of
11 Petitioner's wife, Aurelia Estrella de Mondaca, and one of his
12 daughters, Mireya Estrella Mondaca, to that of lawful permanent
13 resident. (Petitioner's Exs. 13 and 14.)

14 During September of 1980, the petitioner was arrested based upon
15 probable cause to believe he had transported Mexican citizens in the
16 United States. He gave the name "Reynaldo Carlon Mondaca." He was
17 charged with crimes in the District of Arizona. Neither the INS nor
18 the United States Attorney questioned his assertion that his name is
19 Reynaldo Carlon Mondaca. (Petitioner's Exs. 18 and 19.)

20 On March 23, 1983, an INS officer requested an Assistant United
21 States Attorney in the Western District of Washington to prosecute the
22 petitioner for a violation of immigration law. The AUSA declined to
23 seek an indictment. As a result, the INS officer sent a letter to a
24 fellow officer in Fresno, California, recommending further
25 investigation of the petitioner's identity. No action was taken to
26

1 deport the petitioner. (Petitioner's Ex. 20.)

2 On January 31, 1994, the petitioner was convicted in Yakima
3 County Superior Court of the crime of second degree assault while
4 armed with a deadly weapon. (Respondent's Ex. 234 at 2.)

5 On December 14, 1994, the INS issued an Order to Show Cause.
6 (Joint Pretrial Order, Agreed Fact 20, at 7.)

7 On December 15, 1994, the petitioner's wife, Aurelia Mondaca,
8 executed a sworn, written statement. The first paragraph after the
9 preamble provides:

10 I first met Reynaldo Mondaca in 1955 in El Fuerte, Sinaloa,
11 Mexico. In this time I met his mother Antonia Carlon and
12 his father Marin Mondaca. When I was around the family, his
13 parents and other family members always called him Reynaldo.
14 He was always called Reynaldo Mondaca by himself and all of
his family and friends. This was the rancho of his birth.

15 (Petitioner's Ex. 25.) The third paragraph of Mrs. Mondaca's written
16 statement provides:

17 From the time I first met him[,] . . . [h]e told me that he
18 had been born in Imperial, California and that his parents
19 were up there working. They had returned to Mexico when he
was a small baby and he grew up there on the ranch.

20 *Id.* The final paragraph of Mrs. Mondaca's written statement provides:

21 During all of the this time I have known him to be Reynaldo
22 Mondaca. I am totally convinced this is his correct name
23 because that is the name he was called by all of his family
24 and friends at the ranch where he was born and grew up in
Mexico.

25 *Id.*

26 On December 19, 1994, Mrs. Mondaca submitted a corrected

1 statement explaining she had not meant to say, in her December 15th
2 statement, that her husband was born on a ranch near El Fuerte.
3 (Petitioner's Ex. 25.)

4 An IJ conducted a hearing concerning the INS's allegations. The
5 hearing occurred on three, widely-separated days: August 13, 1997,
6 April 29, 1998, and November 17, 1998.

7 On April 27, 1998, the Secretary of State issued a United States
8 passport to Petitioner under the name Reynaldo Carlon Mondaca. The
9 Petitioner lost the passport. (Joint Pretrial Order, Agreed Fact 15,
10 at 6.)

11 On April 29, 1998, the petitioner testified before an Immigration
12 Judge. (Respondent's Ex. 204, pp. 92-199.)

13 The petitioner had no explanation for why he used the name
14 Salvador Mondaca Vega. (Ex. 204, p. 116.)

15 The petitioner denied knowing anyone by that name, even though a
16 person by that name was born in the village in which he grew up during
17 the same year he was born. *Id.*

18 The petitioner could not remember whether he applied for a social
19 security number under the name Salvador Mondaca Vega. (Ex. 204, p.
20 121 and p. 146.)

21 The petitioner testified that once he gave the name Salvador
22 Mondaca Vega to the INS, he thought it best to continue using that
23 name, even though it wasn't his true name. (Ex. 204, p. 142.)

24 The petitioner denied he carried his birth certificate and social
25 security card with him. (Ex. 204, pp. 134-36.)
26

1 The petitioner had no explanation for why he continued using the
2 name "Salvador Mondaca Vega" after obtaining a social security card
3 under the name "Reynaldo Mondaca." (Ex. 204, pp. 137-38.)

4 The petitioner had no explanation for why he stopped using the
5 name "Salvador Mondaca Vega" and started using the name "Reynaldo
6 Mondaca Carlon." *Id.*

7 On April 29, 1998, the petitioner's wife, Aurelia Mondaca,
8 testified before the IJ. (Petitioner's Ex. 24; Respondent's Ex. 204,
9 pp. 157-176.)

10 She said she met the Petitioner in 1958 in El Fuerte.
11 (Respondent's Ex. 204, p. 82.)

12 She said his parents names were "Marin Mondaca" and "Antonia
13 Carlon." (Ex. 204, p. 83.)

14 She said no one in El Fuerte referred to him as "Salvador Mondaca
15 Vega." *Id.*

16 On September 17, 2005, the petitioner obtained a replacement
17 passport from the Secretary of State. (Joint Pretrial Order, Agreed
18 Fact 16, at 6.)

19 On July 16, 2010, one of the respondent's attorneys took the
20 petitioner's deposition. (Respondent's Ex. 203.)

21 He insisted he used the name "Salvador Mondaca Vega" only once.
22 (Respondent's Ex. 203 at 7-8.)

23 He said that since he lacked papers to document he was Reynaldo
24 Mondaca Carlon, a United States citizen, his friends counseled him to
25 continue using the name Salvador Mondaca Vega so he would be released
26

1 from custody more quickly. *Id.* at 9.

2 He could not remember why he chose to use the name "Salvador
3 Mondaca Vega." *Id.* at 10, 16-17.

4 He could not remember registering with a Selective Service Board
5 under the name Renoldo Mondaca. *Id.* at 36.

6 He insisted he had been deported only once. *Id.* at 41, 83. He
7 denied ever accepting voluntary departure. *Id.* at 41.

8 He denied admitting to an INS official in 1954 that his name is
9 Salvador Mondaca-Vega. *Id.* at 44, 48. Later, he expressed great
10 confusion about the 1954 statement. *Id.* at 80-83.

11 He said he usually traveled to El Fuerte by bus. *Id.* at 66. He
12 said he had no trouble reentering the United States because he had his
13 papers. *Id.* at 66, 73.

14 On April 20, 2011, the respondent filed a paper that is entitled
15 "Notice of Passport Revocation." The Notice states the Secretary
16 revoked the petitioner's passport on April 19, 2011.

17 On April 26, 2011, the Court conducted a bench trial. The
18 petitioner testified.

19 The petitioner's memory at trial was much clearer than it was
20 during his deposition.

21 At trial, the petitioner testified he traveled to the United
22 States at some point between the age 20 and the age 22. He was
23 "kicked out" because he "didn't have [a] passport."

24 He returned to El Fuerte. His mother gave him his birth
25 certificate. He learned he is a United States citizen.
26

1 He "always" had his United States birth certificate with him.

2 He said he gave a false name to the INS at the suggestion of his
3 friends. They told him that he would remain in jail longer if he used
4 his true name.

5 After he was deported under a false name, he obtained his United
6 States birth certificate. Thereafter, he did not have any trouble
7 coming back into the United States.

8 He could not recall why he used the name Salvador Mondaca-Vega.

9 He could not remember registering with a Selective Service Board
10 under the name Renoldo Mondaca.

11 The petitioner's daughter, Consuelo, testified at the 2011 trial.

12 She was born in Mexico on December 28, 1969. She has obtained
13 derivative citizenship through her father.

14 She is now married. Her married name is Consuelo Mondaca-Luna.

15 She is employed as a school counselor.

16 She said she had always known her father as "Reynaldo Mondaca."
17 She said her mother had always referred to her father as "Reynaldo,"
18 and she had never heard outside the family refer to him by any other
19 name.
20

21 She said she saw a copy of her father's birth certificate when
22 she was growing up.

23 During her early 20s, she and her mother traveled to a detention
24 facility in Seattle, Washington, where her father was being held. She
25 told a member of the staff that she was prepared to post bail for
26 "Reynaldo Mondaca." The staff member said told her there was no one

1 by that name in the facility. The staff member told them a man named
2 "Salvador Mondaca" was detained in the facility. This man turned out
3 to be her father. She asked him why he was being held under the name
4 "Salvador Mondaca." All he said was that "it was a mixup."

5 During the April 26th bench trial, the petitioner did not
6 indicate whether he intends to challenge the Secretary's decision to
7 revoke his passport. Given the uncertain status of the Secretary's
8 decision, the Court will assume, for purposes of 8 U.S.C. §
9 1252(b)(5)(B), that the petitioner continues to possess a valid
10 passport.

11 **FINDINGS CONCERNING DISPUTED ALLEGATIONS**

12 Most of the evidence that is summarized above is undisputed. The
13 following are the Court's findings concerning disputed allegations
14 that are material to the resolution of the petitioner's citizenship:
15

16 A. It is highly improbable the petitioner obtained the birth
17 certificate for Renoldo Mondaca from his mother.

18 1. On May 11, 1953, the petitioner was detained by the INS in the
19 King County Jail. If the petitioner had possessed the birth
20 certificate for Renoldo Mondaca at that time, and if it was his birth
21 certificate, he would have presented it to the INS.

22 2. On May 22, 1953, the INS deported the petitioner at San
23 Ysidro, California, under the name Salvador Mondaca-Vega.

24 3. On May 23, 1953, the petitioner applied for a Social Security
25 card in Calexico, California, under the name Reynaldo C. Mondaca.

26 4. He would have had to present a birth certificate in order to

1 obtain a Social Security number.

2 5. No matter which route one takes, it is at least 840 miles by
3 road from San Ysidro to El Fuerte, and it is at least 730 miles from
4 El Fuerte to Calexico. See Google Maps, <http://maps.google.com> (last
5 visited July 11, 2011).

6 6. The petitioner testified he sometimes traveled by bus to El
7 Fuerte.

8 7. It would have been extremely difficult, if not impossible, for
9 the petitioner to travel from San Ysidro to El Fuerte, and from El
10 Fuerte to Calexico, between May 22nd and May 23rd.

11 8. The petitioner did not obtain the birth certificate for
12 Renoldo Mondaca in El Fuerte on either May 22nd or May 23rd.

13 9. It is approximately 125 miles from San Ysidro to Calexico,
14 California. Thus, it would have been possible for the petitioner to
15 travel from San Ysidro to Calexico between the 22nd and 23rd of May.
16

17 10. The petitioner obtained the birth certificate for Renoldo
18 Mondaca at some location near the border between the United States and
19 Mexico on either May 22nd or May 23rd.

20 B. The petitioner's continued use of the name "Salvador Mondaca-
21 Vega" after May 23, 1953, is inexplicable if he is Renoldo Mondaca.

22 1. On July 28, 1953, the petitioner was deported from the United
23 States under the name Salvador Mondaca-Vega. This was the middle of
24 the Summer; a busy time of year for an agricultural laborer. It was
25 not in the petitioner's financial interest to be removed from the
26 United States at this time. Two months earlier, he had submitted a

1 United States birth certificate to the Social Security Administration.
2 If the petitioner is Reynaldo C. Mondaca, it would have made sense for
3 him to present the birth certificate to the INS when detained.¹

4 2. On September 15, 1954, an INS official issued a warrant for
5 the detention of the petitioner, who was being held by the Yakima
6 County Sheriff under the name Salvador Mondaca-Vega. There would have
7 been a great deal of agricultural work in Yakima County during
8 September and October. It was in the petitioner's financial interest
9 to remain in the United States. If the petitioner is Reynaldo C.
10 Mondaca, it would have made sense for him to present his birth
11 certificate and Social Security card to the INS. He did not do so.
12 To the contrary, on September 20, 1954, he stated under oath that his
13 name is Salvador Mondaca-Vega and that he was born on "April 16, 1931,
14 at El Puerte, Sin., Mexico."

15 3. The date of birth provided by the petitioner (April 16, 1931)
16 is inconsistent with the date of birth on Salvador Mondaca-Vega's
17 birth certificate (June 3, 1931). The Court has considered the
18 discrepancy in light of the record as a whole. On September 8, 1952
19 (i.e., two years earlier) a person claiming to be Salvador Mondaca
20 applied for a Social Security card. The applicant correctly
21 identified the parents of Salvador Mondaca-Vega, which suggests he was
22 the true Salvador. He gave the date of April 13, 1931, as his birth
23 date.
24

25
26 ¹It is unclear whether he had received his Social Security
card by July 28th.

1 4. The information that the petitioner provided to the INS on
2 September 20, 1954, is substantially consistent with the information
3 that is contained in the birth certificate for Salvador Mondaca-Vega.

4 5. The petitioner would not have been able to provide both
5 Salvador Mondaca-Vega's year of birth and area of birth unless either
6 he is Salvador or he once knew him.

7 C. The petitioner's testimony is unpersuasive.

8 1. The petitioner used the name Salvador Mondaca-Vega throughout
9 the 1950s and, to a lesser extent, the 1960s despite the fact he had
10 obtained a United States birth certificate and a Social Security card.
11 He has made inconsistent statements with respect to whether he
12 typically carried those documents with him. During his 2010
13 deposition, he indicated he used the name Salvador Mondaca-Vega on the
14 advice of persons who were detained with him. He claims they told him
15 he would be released sooner if he did not dispute that he is Salvador
16 Mondaca-Vega. He might have followed such advice before he had
17 obtained a United States birth certificate and Social Security card,
18 but not after. It is unlikely a person who has a United States birth
19 certificate and a Social Security card would state under oath that he
20 is a citizen of Mexico; unless the birth certificate was not his and
21 he had obtained the Social Security card by means of fraud. In that
22 case, he well might state his true name, viz., Salvador Mondaca-Vega.

23 2. The petitioner cannot explain why he ceased using the name
24 Salvador Mondaca-Vega and began using the name Reynaldo C. Mondaca.
25 The most probable explanation is his marriage to Aurelia Estrella in
26

1 Reno, Nevada, on August 7, 1970. She had borne him five children.
2 Four more would follow. He was in a much better position to provide
3 for his wife and children as Reynaldo C. Mondaca, a citizen of the
4 United States, than as Salvador Mondaca-Vega, a citizen of Mexico.
5 For example, as Reynaldo C. Mondaca, he was able to obtain derivative
6 citizenship for his wife and Mexican-born children.

7 D. Aurelia Mondaca Estrella's testimony is unpersuasive.

8 1. On December 15, 1994, the petitioner's wife, Aurelia Mondaca
9 Estrella, submitted a written statement to the INS. As originally
10 written, her statement was inconsistent. On the one hand, she said
11 the petitioner told her he had been born in Imperial, California. On
12 the other hand, she twice said he had been born on a ranch in El
13 Fuerte. Someone noticed the inconsistency. On December 19th, she
14 submitted a correction in which she said that she had not meant to say
15 the petitioner was born on a ranch in Mexico.
16

17 2. On April 29, 1998, Mrs. Mondaca testified before the IJ in
18 support of her husband's allegation that he is Reynaldo Mondaca. The
19 IJ had an opportunity to observe her demeanor and consider her
20 testimony in light of the record as a whole. The IJ discounted her
21 testimony.

22 3. The Court is unpersuaded by the testimony of Aurelia Mondaca
23 Estrella. To begin with, her initial written statement to the INS was
24 inconsistent with respect to the petitioner's place of birth. In
25 addition, none of the information she provided about the petitioner's
26 parents and siblings reflected intimate knowledge; that is to say,

1 none of her statements about the petitioner's family revealed details
2 that only could have come from personal knowledge. Finally, the IJ
3 observed Mrs. Mondaca while she testified and he discounted her
4 testimony.

5 E. The testimony of Consuelo Mondaca-Luna is credible, but it has
6 limited probative value

7 1. The petitioner's daughter, Consuelo Mondaca-Luna, testified at
8 the trial that was held on April 26, 2011. She testified truthfully
9 to the best of her ability. Nevertheless, her testimony has limited
10 probative value. To begin with, she was born on December 28, 1969.
11 By that time, the petitioner had largely ceased using the name
12 Salvador Mondaca-Vega. In addition, the petitioner concealed from her
13 the full extent of his use of the name "Salvador Mondaca-Vega."

14 **CONCLUSIONS OF LAW**

15 This proceeding is a type of declaratory judgment action. 8
16 U.S.C. § 1252(b)(5)(B). The petitioner seeks a determination that he
17 is a citizen of the United States. Although this case has a lengthy
18 history, it is the Court's task to make a de novo finding with respect
19 to the petitioner's citizenship. *Sanchez-Martinez v. INS*, 714 F.2d
20 72, 74 n.1 (9th Cir.1983) (per curiam), cert. denied, 466 U.S. 971,
21 104 S.Ct. 2344, 80 L.Ed.2d 818 (1984).

22 1. The petitioner bears the initial burden of proving United
23 States citizenship by a preponderance of the evidence. *Id.* at 74
24 (citing *Yee Tung Gay v. Rusk*, 290 F.2d 630, 631 (9th Cir.1961)).

25 2. The petitioner has carried his burden in either of two ways.
26

1 During the 1970s, the INS determined his wife and Mexican-born
2 children were entitled to derivative citizenship through him. In
3 addition, the Secretary of State issued a United States passport to
4 him on April 27, 1998.²

5 3. Where, as here, a department within the Executive Branch has
6 determined a person is a citizen of the United States, the DHS may
7 rebut the determination by presenting clear, unequivocal, and
8 convincing evidence that the prior determination was a product of
9 fraud or error. *Lim v. Mitchell*, 431 F.2d 197, 199 (9th Cir.1970);
10 *Lee Hon Lung v. Dulles*, 261 F.2d 719, 724 (9th Cir.1958). The clear-
11 and-convincing standard is a more demanding standard than the
12 preponderance-of-the-evidence standard. *Murphy v. INS*, 54 F.3d 605,
13 610 (9th Cir.1995). In order to satisfy the clear-and-convincing
14 standard, the respondent must demonstrate it is highly improbable the
15 petitioner is Renoldo Mondaca. Stated alternatively, the respondent
16 must demonstrate it is highly probable the petitioner is Salvador
17 Mondaca Vega. See Ninth Circuit Model Civil Jury Instruction § 1.4
18 ("When a party has the burden of proving any claim or defense by clear
19 and convincing evidence, it means you must be persuaded by the
20 evidence that the claim or defense is highly probable.").

21
22 4. The petitioner has a birth certificate for Renoldo Mondaca.
23 He alleges he obtained it from his mother. This allegation is highly
24 improbable. He was deported on May 22, 1953, at San Ysidro,

25
26 ²The Secretary issued a replacement passport on September
17, 2005.

1 California. It is highly improbable he had a birth certificate in his
2 possession when he left the United States. It is highly probable he
3 presented a United States birth certificate to the Social Security
4 Administration in Calexico, California, the next day. He did not have
5 time to travel to El Fuerte to retrieve a birth certificate. He must
6 have obtained it from some location near the border between the United
7 States and Mexico. The Social Security Administration issued a Social
8 Security card to the petitioner based upon the birth certificate. His
9 behavior thereafter is inexplicable if he truly is Renoldo Mondaca.
10 Why would he later state to the INS under oath that he is a citizen of
11 Mexico if he had a United States birth certificate and a Social
12 Security card? The petitioner alleges he did so in order to obtain
13 release more quickly. This allegation is highly improbable. To the
14 contrary, it is highly probable he told the truth on September 20,
15 1954. That is to say, it is highly probable he is Salvador Mondaca-
16 Vega and he was born in Mexico. In sum, the respondent has carried
17 his burden. He has presented clear, unequivocal, and convincing
18 evidence the petitioner is not a citizen of the United States.
19

20 **THE COURT SO FINDS AND CONCLUDES.** The District Court Executive
21 is hereby directed to enter these findings and conclusion, transmit a
22 copy to the Ninth Circuit, furnish copies to counsel, and close this
23 case.

24 **DATED** this 14th day of July, 2011.

25 s/ Fred Van Sickle
26 Fred Van Sickle
Senior United States District Judge